

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

Gloria Jean Jones,

Plaintiff,

v.

Case No. 02-2392-JWL

**Norman Y. Mineta, Secretary,
Department of Transportation,
Federal Aviation Administration,**

Defendant.

MEMORANDUM & ORDER

Plaintiff filed suit against defendant alleging discrimination on the basis of her race, sex and disability arising out of her employment. Plaintiff further alleged that defendant retaliated against her after she filed an EEO complaint. On July 8, 2004, the court issued an order denying plaintiff's motion for summary judgment, granting defendant's motion for summary judgment and dismissing plaintiff's complaint in its entirety. This matter is presently before the court on plaintiff's motion to vacate the judgment (doc. #56) and plaintiff's motion to appoint counsel (doc. #57). The motions are denied.

As plaintiff's motion to vacate was filed within 10 days of the judgment, the motion is properly construed as a motion to alter or amend pursuant to Fed. R. Civ. P. 59(e). *See Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Grounds warranting such a motion include "(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." *Id.* (citing *Brumark Corp. v. Samson Resources Corp.*, 57 F.3d 941, 948 (10th Cir. 1995)). Thus, a motion for

reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law. *Id.* It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing. *Id.* (citing *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991)).

In her motion for reconsideration, plaintiff urges that the court's order granting summary judgment in favor of defendant violates plaintiff's Seventh Amendment right to a jury trial. This argument is rejected. As the Tenth Circuit has recognized, the "Seventh Amendment is not violated by proper entry of summary judgment, because such a ruling means that no triable issue exists to be submitted to a jury." *Shannon v. Graves*, 257 F.3d 1164, 1167 (10th Cir. 2001) (citing *Fidelity & Deposit Co. v. United States*, 187 U.S. 315, 319-20 (1902)). In a related vein, plaintiff contends that the court's order denied plaintiff due process and equal protection as guaranteed by the United States Constitution. This argument, too, is rejected. *See Coando v. Westport Resources*, 2003 WL 22931410, at *2 (10th Cir. Dec. 12, 2003) (plaintiff's due process and equal protection rights were not violated by court's dismissal of complaint).

Plaintiff next directs the court to additional evidence that plaintiff describes as "newly discovered" evidence in support of her claims. The court has reviewed these additional materials submitted by plaintiff and readily concludes that, in large part, the evidence cannot be construed as "newly discovered." The vast majority of the documents were quite obviously in plaintiff's possession at the time the court granted summary judgment in this case (indeed, most of the documents were either drafted by or mailed to plaintiff prior to the summary judgment stage). With respect to the few documents that might be considered "newly discovered," plaintiff has

simply not explained how these documents warrant relief from the court's order and the court, after reviewing the documents, can discern no basis for reconsidering its summary judgment order.

Plaintiff also contends that reconsideration is warranted because opposing counsel misrepresented various facts during a settlement conference. Plaintiff, however, does not describe the nature of the facts allegedly misrepresented by opposing counsel and, more significantly, she does not explain how such misrepresentations in any way affected the court's summary judgment ruling. Thus, even assuming such evidence was admissible under Federal Rule of Evidence 408, counsel's alleged misrepresentations provide no basis for reconsideration of the court's order.

The remaining arguments in plaintiff's motion are incomprehensible to the court and, consequently, the court cannot reasonably address those arguments. For the foregoing reasons, then, plaintiff's motion for reconsideration is denied. Finally, because the court determined on summary judgment that plaintiff's claims lack merit (and reaffirms that decision herein), the court denies plaintiff's motion to appoint counsel. *See Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (in deciding whether to appoint counsel in civil case, court considers merits of litigant's claims).

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff's motion to vacate judgment (doc. # 56) and plaintiff's motion to appoint counsel (doc. #57) are denied.

IT IS SO ORDERED this 16th day of September, 2004.

s/John W. Lungstrum

John W. Lungstrum

United States District Judge